

**United States Court of the United States**  
**DOCKET TERM, 1990**

**BARBARA HAFER, PETITIONER**

**v.**

**JAMES C. MELO, JR., ET AL., RESPONDENTS**

**On Writ of Certiorari to the  
United States Court of Appeals  
for the Third Circuit**

**EDITION FOR LEAVE TO FILE BRIEF FOR THE  
AMERICAN CIVIL LIBERTIES UNION AND THE  
ACLU OF PENNSYLVANIA AS AMICI CURIAE  
AND BRIEF AS AMICI CURIAE  
IN SUPPORT OF RESPONDENTS**

**JOHN A. POWELL  
STEVEN R. SHAPIRO  
American Civil Liberties  
Union Foundation  
188 West 42 Street  
New York, New York 10036  
(212) 944-9300**

**ANDREW J. PINCUS \*  
Mayer, Brown & Platt  
2000 Pennsylvania Ave., N.W.  
Washington, D.C. 20006  
(202) 773-0623**

**\* Counsel of Record**

**Shapiro - Brown Foundation Co., Inc. - 200-6000 - Washington, D.C. 20001**

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# **In the Supreme Court of the United States**

OCTOBER TERM, 1990

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No. 90-681

BARBARA HAFFER, PETITIONER

v.

JAMES C. MELO, JR., ET AL., RESPONDENTS

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On Writ of Certiorari to the  
United States Court of Appeals  
for the Third Circuit

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## **MOTION FOR LEAVE TO FILE BRIEF FOR THE AMERICAN CIVIL LIBERTIES UNION AND THE ACLU OF PENNSYLVANIA AS AMICI CURIAE IN SUPPORT OF RESPONDENTS**

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Pursuant to Rule 37.4 of the Rules of this Court, the American Civil Liberties Union (ACLU) and the ACLU of Pennsylvania respectfully move for leave to file the accompanying brief as *amici curiae* in support of respondents. Counsel for respondents has consented to the filing of this brief, but counsel for petitioner has refused consent.

The ACLU is a nationwide, nonpartisan organization with nearly 300,000 members dedicated to the principles of liberty and equality embodied in the Constitution and civil rights laws. Since its founding nearly 70 years ago, the ACLU has been particularly concerned with the ability of individuals to obtain redress for violations of their federal constitutional

rights. The ACLU has, therefore, appeared before this Court in numerous cases concerning the scope of the federal civil rights laws, both as counsel for parties and as *amicus curiae*. The ACLU of Pennsylvania is one of the ACLU's statewide affiliates.

This case brings before the Court a significant question regarding the availability of damages in actions against state officers under 42 U.S.C. § 1983. The position urged by petitioner, if adopted, would leave persons harmed by unconstitutional state action unable to obtain compensation for their injuries. The elimination of the damages remedy would also significantly reduce Section 1983's effectiveness in deterring violations of constitutional rights. *Amici* have a strong interest in preventing such an unjustified restriction on this important federal remedy.

Respectfully submitted.

JOHN A. POWELL  
STEVEN R. SHAPIRO  
American Civil Liberties  
Union Foundation  
132 West 43 Street  
New York, New York 10036  
(212) 944-9800

ANDREW J. PINCUS \*  
*Mayer, Brown & Platt*  
2000 Pennsylvania Ave., N.W.  
Washington, D.C. 20006  
(202) 778-0628

May 14, 1991

\* Counsel of Record

# QUESTION PRESENTED

Whether this Court's decision in *Will v. Michigan Dep't of State Police*, 491 U.S. 58 (1989), forecloses a damages remedy under 42 U.S.C. § 1983 for injuries caused by the official conduct of a state officer when the officer is sued in his or her personal capacity.

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BRIEF FOR THE AMERICAN CIVIL LIBERTIES UNION  
AND THE ACLU OF PENNSYLVANIA AS  
AMICI CURIAE IN SUPPORT OF RESPONDENTS

---

**INTEREST OF THE AMICI CURIAE**

The American Civil Liberties Union (ACLU) is a nationwide, nonpartisan organization with nearly 300,000 members dedicated to the principles of liberty and equality embodied in the Constitution and civil rights laws. The ACLU of Pennsylvania is one of the ACLU's statewide affiliates. As described in the accompanying motion for leave to file this *amicus* brief, petitioner's argument regarding the scope of 42 U.S.C. § 1983, if adopted, would reduce dramatically the scope of this important federal remedy, depriving persons injured by unconstitutional state action of any opportunity to obtain compensation for their injuries and eliminating the deterrent effect of

the damages remedy now recognized under Section 1983.

### STATEMENT

1. Petitioner is the incumbent Auditor General of the Commonwealth of Pennsylvania, a state-wide elected officer charged with overseeing the receipt and disbursement of public funds. The complaint alleges that in the course of petitioner's 1988 campaign for election to that post, petitioner stated that she had been given a list of employees of the Auditor General's office who had "bought their jobs."<sup>1</sup> Petitioner promised that, if elected, she would fire all of the employees on the list. After petitioner assumed office, she fired 18 employees whose names supposedly were on the list, including eight of the respondents. Pet. App. A5.

The latter eight respondents allege that their discharges were politically motivated (petitioner is a Republican and they are Democrats who supported petitioner's opponent in the election) and, in addition, that the discharges violated their procedural and substantive due process rights. The other eight respondents (who allege that they too are Democrats) also contend that they were fired in violation of the free speech and due process protections conferred by the Constitution. All of the respondents sought relief under 42 U.S.C. § 1983, asserting claims for compensatory and punitive damages and attorneys' fees. J.A. 7-19, 26-29, 33-36, 37-41.<sup>2</sup> Six

<sup>1</sup> Petitioner's predecessor had been informed of these allegations by the United States Attorney's office, conducted an inquiry, and concluded that no wrongdoing had occurred. Pet. App. A4.

<sup>2</sup> A number of separate complaints were filed by respondents.

of the respondents also sought an order reinstating them to their jobs in the Auditor General's office. J.A. 41.

2. The district court dismissed the actions. Pet. App. A36-A42. The court stated that "[petitioner's] removal of plaintiffs from their positions occurred in her role as Auditor General, a constitutional office under the Pennsylvania Constitution." *Id.* at A40. Observing that respondents were "employees of the Commonwealth, not of [petitioner]," the district court stated that petitioner's "power to cause the terminations derived solely from her authority as a state official. Had [petitioner] been acting in a personal capacity, she would not have been empowered to effectuate the discharges." *Ibid.* Apparently because the complaints sought damages for injuries caused by petitioner's official acts, the court dismissed respondents' Section 1983 claims. Pet. App. A38-A40.

3. The court of appeals unanimously reversed. Pet. App. A1-A33. The court acknowledged that this Court in *Will v. Michigan Dep't of State Police*, 491 U.S. 58 (1989), held that Section 1983 damages actions could not be brought against state officers in their official capacities. It concluded that "because personal capacity suits against state officials are actions against the individual and not the state, state officials sued for damages in their personal capacities are 'persons' under section 1983 and therefore subject to suit." Pet. App. A14-A15.

The court went on to determine "whether [respondents] sued [petitioner] in her personal capacity, official capacity, or both," by "first look[ing] to the complaints and the 'course of proceedings.'" Pet.



App. A15 (quoting *Kentucky v. Graham*, 473 U.S. 159, 167 n.14 (1985)). The court observed that one set of respondents had expressly sued petitioner in her official capacity—seeking reinstatement—and in her personal capacity—seeking damages. The court concluded that the remaining complaints “signified a similar intent” to institute personal capacity damages actions against petitioner “because the captions in the complaints only list ‘Barbara Hafer,’ and not the Commonwealth of Pennsylvania, as a defendant, and only request damages from Hafer and not from the state.” Pet. App. A16. The court added that “[i]t appears that [petitioner] understood that [respondents] sought to sue her in her personal capacity because she raised the defense of qualified immunity throughout the course of these proceedings, a defense available only for governmental officials when they are sued in their personal, and not in their official, capacity.” *Ibid.*

The court of appeals concluded that “once [respondents] explained in the district court that they sued [petitioner] for damages in her individual capacity, they should have been given leave to amend to so assert with specificity, if there was any remaining ambiguity about that issue.” Pet. App. A16. It therefore held that respondents had asserted Section 1983 damages claims against petitioner in her personal capacity and remanded the case for further proceedings with respect to those claims.<sup>3</sup>

<sup>3</sup> Eight respondents also asserted claims under Section 1983 and state law against James J. West, the then-Acting United States Attorney, alleging that West had conspired with petitioner to violate respondents’ rights by providing petitioner with the names of the employees who allegedly had “bought their jobs.” Pet. App. A4-A5. These Section 1983

## INTRODUCTION AND SUMMARY OF ARGUMENT

I. The position advanced by petitioner in this case is truly extraordinary. Although 42 U.S.C. § 1983 expressly establishes a damages remedy for injuries caused by conduct “under color of” state law, a category this Court has held to be essentially coextensive with the “state action” subject to the Fourteenth Amendment, petitioner asserts that Section 1983 does *not* supply a damages remedy if the plaintiff’s injury stems from conduct by a state officer in her official capacity. Acceptance of petitioner’s contention would effectively read Section 1983 out of the United States Code by removing from the statute’s scope the very official governmental misconduct for which it was intended to provide a remedy. Nothing in Section 1983 or in this Court’s precedents requires that bizarre result. This Court should reaffirm that official state action is actionable under Section 1983.

Petitioner’s argument rests on the melding together of two entirely distinct inquiries that arise from the fact that persons holding government office have an “official” capacity in addition to their “personal” capacity. The first inquiry is whether the defendant was *acting* in her official capacity or in her personal capacity when she engaged in the conduct that produced the injury that is the subject of the suit. The express language of Section 1983 specifies that the defendant must have been acting in her official capacity in order to be subject to liability, stating

claims were dismissed by the courts below. Pet. App. A20-A23, A40-A42. The court of appeals declined to uphold the district court’s dismissal of the state law claims, remanding that aspect of the case for further consideration. *Id.* at A23-A32.



that the defendant's conduct must have been "under color of" state law.

The second inquiry seeks to identify the capacity in which the defendant is *sued* by the plaintiff. This Court has recognized that a state officer may be sued in her personal capacity or in her official capacity. The capacity in which the officer is named as a defendant has important consequences for the conduct of the litigation and the relief that may be available. See generally *Kentucky v. Graham*, 473 U.S. 159 (1985). Construing the term "person" in Section 1983, the Court held in *Will v. Michigan Dep't of State Police*, 491 U.S. 58 (1989), that a state official is not subject to suit in her official capacity in an action for damages under Section 1983.

Petitioner does not here challenge the court of appeals' determination that respondents instituted these actions against her in her personal capacity. Petitioner instead asserts that respondents had no right to bring personal capacity suits on the facts of this case. She contends that where, as here, a plaintiff is harmed by official capacity conduct, the plaintiff may not sue the state officer in her personal capacity for money damages. The plaintiff's sole option, according to petitioner, is to commence an official capacity action in which he may obtain only prospective relief.

This Court should reject petitioner's invitation to eviscerate Section 1983. It is clear beyond any doubt that the statute creates a damages remedy for injuries caused by official conduct. The plain language of the statute establishes as much and this Court's decisions confirm that Section 1983 encom-

passes official action such as the discharges challenged in this case.

Petitioner rests her argument solely on the decision in *Will*. But the Court there held only that an officer may not be *sued* in her official capacity in an action for damages. The Court did not in any way hold—or even indicate—that a personal capacity action for damages may not be grounded in an injury caused by official conduct.

II. Amici National Association of Counties, et al. (NAC), urge reversal of the court of appeals' judgment on a ground not raised by petitioner, asserting that some of the complaints in this action are deficient because they do not expressly set forth the capacity in which suit was brought against petitioner. Because that argument was not presented in the certiorari petition—and, contrary to NAC's claim, the argument is not jurisdictional—the Court should not address the question here.

In any event, the court of appeals properly examined "[t]he course of proceedings" (*Brandon v. Holt*, 469 U.S. 464, 469 (1985)) in determining that the complaints asserted claims against petitioner in her personal capacity. There is no warrant for this Court to second guess that fact-bound determination.

## ARGUMENT

### I. SECTION 1983 SUBJECTS A STATE OFFICIAL TO PERSONAL LIABILITY FOR HER OFFICIAL ACTIONS

#### A. The Plain Language Of The Statute And A Long Line Of This Court's Decisions Make Clear That Section 1983 Provides A Damages Remedy For Injuries Caused By Official State Action.

1. This Court has recognized many times that the starting point in construing Section 1983 is the language of the statute, which "must be broadly construed." *Dennis v. Higgins*, 111 S. Ct. 865, 868 (1991) (quoting *Golden State Rapid Transit Corp. v. City of Los Angeles*, 110 S. Ct. 444, 448 (1989)). The provision imposes liability on "[e]very person who, under color of [state law] \* \* \* subjects" any person to a deprivation of rights secured by the Constitution or federal law. The plain meaning of this provision encompasses conduct by a state officer in her official capacity. Official acts of a state officer are necessarily acts "under color of" state law.

This Court's precedents confirm the common sense conclusion that Section 1983 reaches official acts of state officers. The Court long ago held that "[m]isuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken 'under color of' state law." *United States v. Classic*, 313 U.S. 299, 326 (1941) (interpreting 18 U.S.C. § 241, the criminal analog to Section 1983). Accord, *West v. Atkins*, 487 U.S. 42, 49 (1988); *Monell v. New York City Dep't of Social Services*, 436 U.S. 658, 695-701 (1978); *Monroe v. Pape*, 365 U.S. 167, 187 (1961).

It is settled that a state officer need not violate a state law limit on her authority for her actions to constitute conduct "under color of" state law within the meaning of Section 1983. The Court recently explained that the "under color of" state law requirement means that Section 1983 liability attaches to "those wrongdoers 'who carry a badge of authority of a State and represent it in some capacity, whether they act in accordance with their authority or misuse it.'" *NCAA v. Tarkanian*, 488 U.S. 179, 191 (1988) (quoting *Monroe v. Pape*, 365 U.S. at 172). "[G]enerally, a public employee acts under color of state law while acting in his official capacity or while exercising his responsibilities pursuant to state law." *West*, 487 U.S. at 50. See also *Paratt v. Taylor*, 451 U.S. 527, 535-536 (1981).<sup>4</sup>

Indeed, the Court repeatedly has made clear that "if a defendant's conduct satisfies the state-action requirement of the Fourteenth Amendment, 'that conduct [is] also action under color of state law and will support a suit under § 1983.'" *West v. Atkins*, 487 U.S. at 49 (quoting *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 935 (1982)). Accord, *Rendell-Baker v. Kohn*, 457 U.S. 830, 838 (1982); *United*

<sup>4</sup> To our knowledge, no Member of the Court has ever disagreed with the proposition set forth in the text. The Court was for a time divided over the question whether official acts that violated the state law limits on an officer's authority were nonetheless acts performed "under color of" state law, but it concluded that such conduct is actionable under Section 1983. *Monroe v. Pape*, 365 U.S. at 187. See also *Williams v. United States*, 341 U.S. 97, 99 (1951); *Screws v. United States*, 325 U.S. 91, 107-111 (1945). Ironically, petitioner's position is apparently that the latter situation is the *only* one in which damages are available under Section 1983.



*States v. Price*, 383 U.S. 787, 794 n.7 (1966). There can be no doubt that official acts of state officers constitute "state action" subject to the Fourteenth Amendment. Those acts accordingly may form the basis for a suit under Section 1983.

2. Petitioner does not directly challenge this Court's construction of Section 1983's "under color of" state law requirement. Rather, petitioner argues (Br. 13, 16-17) that when the plaintiff's injury stems from official conduct, the Section 1983 remedy is sharply limited: the plaintiff may not institute a personal capacity action to recover damages for his injuries. Thus, if a lawsuit seeks relief for harm caused by official conduct, it is necessarily an official capacity action and the plaintiff may obtain only prospective relief.

To begin with, petitioner has suggested no reason that Section 1983 alters the general rule that the capacity in which an individual is party to a suit turns solely upon how the plaintiff has chosen to frame the action. Indeed, the Court has applied that standard in determining the capacity of parties to Section 1983 actions. *Bender v. Williamsport Area School Dist.*, 475 U.S. 534, 543 (1986); *Kentucky v. Graham*, 473 U.S. 159 (1985); *Brandon v. Holt*, 469 U.S. 464 (1985). Cf. *Karcher v. May*, 484 U.S. 72 (1987) (intervenor's capacity).

Certainly nothing in the language of the statute supports petitioner's contention. Section 1983 states that "[e]very person" who acts under color of state law to deprive another of federal constitutional and statutory rights "shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." The statute thus confers a

broad right to seek all forms of relief against "person[s]." Because an individual sued in her individual capacity is plainly a "person," the statute simply cannot be read to limit monetary relief in the manner suggested by petitioner. *Monell*, 436 U.S. at 700-701 (Section 1983 "provide[s] a remedy, to be broadly construed, against all forms of official violation of federally protected rights") (emphasis added). Indeed, "the central purpose of the Reconstruction-Era laws is to provide compensatory relief to those deprived of their federal rights by state actors." *Felder v. Casey*, 487 U.S. 131, 141 (1988). See also *Owen v. City of Independence*, 445 U.S. 622, 651 (1980) ("[a] damages remedy against the offending party is a vital component of any scheme for vindicating cherished constitutional guarantees").

Petitioner's construction of the statute would effectively eliminate damages as a remedy for violations of Section 1983. The "under color of" state law requirement limits the reach of Section 1983 to official conduct. If a personal capacity action may not be maintained when the plaintiff's claim is grounded in official acts of state officers, such an action could never be maintained under Section 1983. That would be a dramatic—and entirely unjustified—change in the law. See, e.g., *Malley v. Briggs*, 475 U.S. 335 (1986) (recognizing that state officers may be subject to personal liability for acts within their official capacities); *Scheuer v. Rhodes*, 416 U.S. 232 (1974) (same).<sup>5</sup>

<sup>5</sup> Indeed, if petitioner's argument were correct, there would have been no need for this Court to hold that government officers are in certain circumstances immune from damages liability for their official acts (see, e.g., *Davis v. Scherer*, 468 U.S. 183 (1984)) because, under petitioner's view, no dam-

Finally, to the extent petitioner's argument rests on some sort of immunity rationale, this Court already has determined the appropriate contours of state officials' immunity from personal damages liability. See, e.g., *Davis v. Scherer*, 468 U.S. 183 (1984). There is no justification whatsoever for the total evisceration of the damages remedy that would result from the approach advocated by petitioner.<sup>6</sup>

**B. This Court's Decision In *Will* Provides No Support For Petitioner's Reworking Of Section 1983.**

Petitioner's entire argument rests on this Court's decision in *Will v. Michigan Dep't of State Police*, *supra*. Yanking a single phrase out of the Court's opinion, petitioner argues that the Court held "that a state officer may not be sued in his personal capacity under 42 U.S.C. § 1983 for acts committed in the performance of the officer's official state duties." Pet.

ages claim may *ever* be asserted against a government official in such circumstances. The Court's immunity decisions squarely recognize that in the absence of immunity such officials would be subject to liability in damages. Those decisions thus support the conclusion that petitioner's contention should be rejected.

<sup>6</sup> Petitioner appears to suggest (Br. 16-17) that the "official acts" category includes only conduct consistent with state law, so that a personal capacity action could be brought where the state officer violated state law as well as the Constitution. But nothing in Section 1983 indicates that Congress intended to make personal liability turn on the peculiarities of state law. Cf. *Davis v. Scherer*, 468 U.S. at 193-196 (state official not divested of immunity from damages liability by violation of state law); *Martinez v. California*, 444 U.S. 277, 284 n.8 (1980). Indeed, petitioner's approach would mean that damages could not be recovered where the unconstitutional act was the result of state policy, arguably the situation in which liability is *most* appropriate.

Br. 13. That construction of the opinion is plainly wrong.

*Will* presented two questions: whether a State is a "person" within the meaning of Section 1983 and whether a state officer sued in her official capacity is a "person" subject to liability under that statute. The Court answered both questions in the negative. After establishing that the State itself was not a "person," the Court turned to the claim "that state officials should be considered 'persons' under § 1983 even though acting in their official capacities," noting that the complaint in *Will* included as a defendant "the Director of State Police in his official capacity." 491 U.S. at 70. The Court observed that "a suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office." *Id.* at 71. Concluding that such an action "is no different from a suit against the State itself," the Court held that "neither a State nor its officials acting in their official capacities are 'persons' under § 1983." *Ibid.*

*Will* applies only where—as in that case—the plaintiff asserts a claim for damages against a state official in her official capacity. Thus, the Court's reference to "officials acting in their official capacities" is a reference to the capacity in which the official is acting *in defending the lawsuit*, not a reference to the capacity in which the official acted when she engaged in the conduct that is the subject of the lawsuit. *Will* simply holds that, in the context of an action for damages, a state officer *sued* in his official capacity is not a "person" within the meaning of Section 1983. *Will* does not hold that the capacity in which the defendant is sued must be the same as the



capacity in which she was acting when she engaged in the conduct underlying the suit.

Petitioner argues (Br. 18) that the present case should be controlled by *Will* because the immunity from damages liability recognized in that case could otherwise "be circumvented by [the] mere pleading device" of filing suit against the officer in her personal capacity. But, as this Court explained in detail in *Kentucky v. Graham*, *supra*, the difference between an official capacity action and a personal capacity suit is not merely a difference in pleading. The two types of actions are substantively distinct. A personal capacity action is a suit in which the individual is personally liable and may assert certain personal defenses, such as absolute or qualified immunity. *Graham*, 473 U.S. at 165, 166-167. An official capacity action, by contrast, is in essence a suit against the governmental entity and the defendant may assert defenses available to the government entity. *Id.* at 165-166.

*Will* recognized that an official capacity action is "a suit against the official's office" and "[a]s such, it is no different from a suit against the State itself." 491 U.S. at 71. For that reason, the Court saw "no reason to adopt a different rule" than the one applicable to Section 1983 suits against States. *Ibid.* There is, by contrast, an important reason why the same rule should not apply to personal capacity actions. Personal capacity actions are *not* suits against the government, but rather suits against individuals. A rule grounded in the determination that states may not be sued under Section 1983 is entirely irrelevant to whether a damages action may be brought against individuals. Indeed, it long has been recognized that the opposite rule applies with respect to individuals:

they *are* subject to suits for damages under that statute. For these reasons, *Will* provides no support for petitioner's contention in this case.<sup>7</sup>

## II. THIS COURT NEED NOT REVIEW THE COURT OF APPEALS' DETERMINATION THAT PETITIONER WAS SUED IN HER PERSONAL CAPACITY AND, IN ANY EVENT, THE COURT OF APPEALS' DETERMINATION IS CORRECT

Amici National Association of Counties, et al. (NAC), does not support petitioner's argument grounded in *Will*. Rather, NAC contends that the court of appeals erred in holding that these actions were instituted against petitioner in her personal capacity. Petitioner plainly did not seek review of that issue by this Court. It is not "fairly in-

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<sup>7</sup> Petitioner suggests (Br. 10, 19-20) that the Eleventh Amendment and policy considerations have some bearing on resolution of the question presented in this case. Both factors are irrelevant. The Eleventh Amendment does not bar damages claims against a state officer in her personal capacity. *Scheuer v. Rhodes*, 416 U.S. at 237-238. See also *Kentucky v. Graham*, 473 U.S. at 166-167.

Petitioner's policy arguments, even if they were persuasive, could not trump Congress's clear intent as expressed in the language of Section 1983. See, e.g., *Pinter v. Dahl*, 486 U.S. 622, 654 (1988). Moreover, there is no merit to the contention that government officials should not be subjected to personal liability for injury caused by unconstitutional official action. The very purpose of Section 1983 was to provide a federal remedy for state officials' constitutional violations. *Felder v. Casey*, 487 U.S. at 139; *Monroe*, 365 U.S. at 180. Indeed, even in the absence of a congressional directive, this Court has concluded that federal officials should be held liable in such circumstances. *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971). Policy considerations thus weigh strongly *against* petitioner's effort to restrict the Section 1983 remedy.

cluded" within the questions presented and was not even mentioned in the certiorari petition.<sup>8</sup> That is more than sufficient to pretermitt consideration of the issue by this Court. Sup. Ct. R. 14.1(a) ("[o]nly the questions set forth in the petition, or fairly included therein, will be considered by the Court").

No doubt recognizing that it faces a formidable hurdle in urging the Court to decide a question not presented in the certiorari petition, NAC argues that the issue is "jurisdictional," apparently on the ground that it supposedly involves the Eleventh Amendment. To begin with, it is not at all clear that the claim in any way relates to the Eleventh Amendment.<sup>9</sup> But even if it did, this Court has "never held that [an Eleventh Amendment issue] is jurisdictional in the sense that it must be raised and decided by this Court on its own motion." *Patsy v. Florida Board of Regents*, 457 U.S. 496, 516 n.19 (1982) (declining to address Eleventh Amendment issue).

Here, moreover, there can be no claim that this Court lacks jurisdiction over the case. As NAC itself acknowledges (Br. 3), the complaint filed by six of the respondents satisfies even NAC's stringent

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<sup>8</sup> As discussed above, petitioner's contention is that the allegations of the complaint are irrelevant because a plaintiff may not assert a personal capacity claim against a state officer for conduct performed in the officer's official capacity. Pet. 10-11.

<sup>9</sup> The Eleventh Amendment confers substantive protections which, as we have discussed (see note 7, *supra*), are not implicated in personal capacity actions like the present case. Since the Amendment does not apply to personal capacity actions, it is impossible to see how the Amendment could impose special pleading requirements in such actions.

pleading standard. See Pet. App. A15; J.A. 41 (¶ 33).<sup>10</sup> Because the case indisputably is properly before the Court as to some of the respondents, there is no need for the Court to consider NAC's argument. *Director, Office of Workers' Compensation Programs v. Perini North River Associates*, 459 U.S. 297, 302-305 (1983) (where one party had standing to urge review of merits of lower court decision, the Court's jurisdiction was clear and there was no need to determine whether other party had standing to seek review). That question should be left to be decided in a case in which it is properly presented.

Turning to the merits of NAC's argument, the court of appeals' construction of respondents' complaints was entirely proper. NAC recognizes (Br. 4) that this court in *Kentucky v. Graham*, *supra*, "meticulously delineated the distinctions between personal and official capacity civil rights actions against state officials." In the course of cataloging the different characteristics of these actions, the Court squarely addressed the issue raised by NAC, stating that "[i]n many cases, the complaint will not clearly specify whether officials are sued personally, in their official capacity, or both. 'The course of proceedings' in such cases typically will indicate the nature of the liability sought to be imposed." 473 U.S. at 167 n.14 (quoting *Brandon v. Holt*, 469 U.S. at 469).

The court below applied the *Graham* standard, analyzing the language of the complaints and observing that petitioner herself had treated the complaints as raising personal-capacity claims, and concluded that the complaints stated damages claims against

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<sup>10</sup> That complaint expressly asserted claims against petitioner in her "personal capacity." J.A. 41. See page 4, *supra*.

petitioner in her personal capacity. Pet. App. A15-A17. The same approach is utilized by a majority of the courts of appeals that have addressed the question. *Melton v. City of Oklahoma City*, 879 F.2d 706, 726-727 & n.29 (10th Cir. 1989), reh'g granted in part on other grounds, 888 F.2d 724 (10th Cir. 1989) (en banc); *Conner v. Reinhard*, 847 F.2d 384, 394 n.8 (7th Cir.), cert. denied, 488 U.S. 856 (1988); *Lundgren v. McDaniel*, 814 F.2d 600, 603-604 (11th Cir. 1987). But see *Wells v. Brown*, 891 F.2d 591, 593 (6th Cir. 1989); *Nix v. Norman*, 879 F.2d 429, 431 (8th Cir. 1989).

NAC argues that *Graham* misstated the law and that the plaintiff in every case must expressly specify the capacity in which suit is brought against a state officer. This contention is grounded in Rule 9(a) of the Federal Rules of Civil Procedure, which requires that the capacity of a party to be sued must be averred "to the extent required to show the jurisdiction of the court." But federal courts have jurisdiction over both official capacity and personal capacity suits. The capacity in which suit is brought simply controls some aspects of the action, such as the nature of the available relief. *Kentucky v. Graham*, 473 U.S. at 165-168. Moreover, NAC's argument would require every complaint seeking damages from a state officer to include an allegation that the action is brought against the officer in her personal capacity, even though—as the court of appeals observed (Pet. App. A16)—the most natural reading of a complaint that simply names the individual is that it seeks relief against the individual in her personal capacity. An allegation regarding capacity is not required by Rule 9(a). NAC's argument should be rejected.

## CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

JOHN A. POWELL  
STEVEN R. SHAPIRO  
*American Civil Liberties  
Union Foundation  
132 West 43 Street  
New York, New York 10036  
(212) 944-9800*

ANDREW J. PINCUS \*  
*Mayer, Brown & Platt  
2000 Pennsylvania Ave., N.W.  
Washington, D.C. 20006  
(202) 778-0628*

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\* Counsel of Record